

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1052 OF 1997

Union of India ..Appellants

versus

M/s. Dineshchandra Mulji ..Respondents

Mr. A. N. Samant for the Appellants.

Mr. G. J. Mohanrao for the Respondents.

CORAM: D.G.DESHPANDE, J.

DATED: 4TH MAY, 2005

ORAL ORDER :

1. Heard learned counsel for the parties.

2. This Appeal is filed by the Union of India - Appellants against the order of the RACT, Mumbai dated 4.6.1997.

3. Mr. Samant raised only two contentions. Firstly, according to him the RR issued by the Railway was "said to contain". The second contention was that the Tribunal awarded interest at the rate of 12% per annum and according to him it should be 9% per annum in view of the Judgment of this Court reported in **2005(1) Mh.L.J. 165 Maharashtra**

State Electricity Board vs. Union of India.

It was a claim against the Railways and the interest was awarded ultimately by the High Court at 9% per annum. I had also followed same judgment earlier, therefore the rate of interest is required to be reduced to 9% per annum. Therefore, he contended that firstly the appeal should be allowed so far as claim on merits is concerned, or alternatively interest rate should be reduced.

4. So far as contention of Mr. Samant of RR with the endorsement "said to contain", the same is required to be rejected.

5. Consignments of wheat were booked vide RRS. No. 708566 dated 9.8.1993, 708594 dated 7.10.1993, 568312 dated 25.12.1993 and 866278 dated 5.1.1994 vide which 248, 255, 252 and 255 bags respectively were booked Ex. Bhudhalada to Turbhe. Out of 248 bags of wheat booked under RR No. 708566, 148 bags were found damaged by rain water and the damage was assessed on percentage basis. In respect of consignment covered under RR No. 708594 there was a shortage of 366 kgs. of wheat. Similarly in respect of consignments covered vide RRs No. 568312 and 866278, there was a short delivery of 79 kgs. and 6

bags, each containing 96 kgs. of wheat respectively. The respondents claimed compensation in respect of the damaged caused to the bags, the appellants settled the claim in respect of damages at low rate and denied that there was any negligence on their part. The Tribunal framed as many as 5 issues but the issue regarding RR "said to contain" was not at all framed. The Tribunal found that there was total negligence of the railway. Therefore, in the circumstances the defence of "said to contain" is not available to the appellants.

6. So far as interest part is concerned, contention of Mr. Samant is required to be accepted in view of the judgment of this court, as stated above.

7. In the result, I pass the following order:

ORDER

. The appeal is partly allowed.

. The principal amount awarded will carry interest at the rate of 9% per annum from the date of application till realisation or till

date of payment or deposit with proportionate costs.

. Amount that is found in excess after the aforesaid calculations shall be returned to the appellants. Respondents will be permitted to withdraw the amount as per the calculations.

. No order as to costs.

4.5.2005

(D.G. DESHPANDE, J.)